IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2885 OF 2004

IN

SUMMARY SUIT NO. 1044 OF 2004

Man Singh Baid ..Plaintiff

versus

R.S. Banthia & Ors. ..Defendants

Mr. J. Choksi i/b. M/s. C.R. Naidu & Co. for the Plaintiff.

Mr. S. Shah with T. N. Tripathi for the Defendants.

CORAM : D. G. DESHPANDE,J.

DATE : 26TH OCTOBER 2004.

P.C. :

1. Heard learned counsel for the parties. This notice of motion is taken out by the plaintiff for attachment of the property before judgment under Order 38 Rule 5 of CPC. Right from the beginning it is the case of the defendants that the property against which this notice of motion is taken out is agreed to be sold as per the MOU between the defendant and the banks, particulars were also given in the affidavit in reply. Those particulars have been given in paragraph (k) and statement is made on oath by the defendants that the entire balance

amount under the MOU are to be paid to the bank to discharge secured debt thereafter. The MOU is with the purchasers. Therefore this is not a case where the defendants is trying to dispose of the property to frustrate the claim of his creditors. The facts are otherwise. Therefore no relief in the notice of motion can be granted to the plaintiff. Statement of the counsel for the defendants that defendants does not have any other property excepting the one mentioned in the notice of motion is recorded and accepted. Notice of Motion is disposed of.

. Parties to act on an ordinary copy of this order duly authenticated by the Court Associate.

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